

ENTERED

April 05, 2022

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

TOMMY ALLEN O'NEAL,

Petitioner,

V.

Civil Action No. 2:21-CV-00311

**DIRECTOR TDCJ,
ASSISTANT DIRECTOR TDCJ,
WARDEN MARSHAL,
WARDEN BURGER,**

Respondents.

ORDER ACCEPTING MEMORANDUM AND RECOMMENDATION

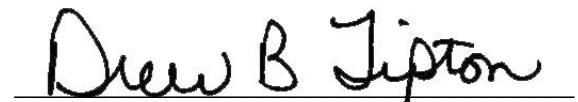
Pending before the Court is the February 9, 2022 Memorandum and Recommendation (“M&R”) of Magistrate Judge Jason B. Libby. (Dkt. No. 9). Magistrate Judge Libby recommends that the Court construe Petitioner Tommy Allen O’Neal’s Habeas Petition, (Dkt. No. 1), as filed under 28 U.S.C. § 2254. Magistrate Judge Libby further recommends that the Petition be dismissed without prejudice prior to service under the screening provisions of Rule 4 of the Rules Governing Section 2254 Cases because it is clear from the face of the petition that O’Neal is not entitled to relief and that the petition is successive. Indeed, Magistrate Judge Libby recounts O’Neal’s history of filing frivolous habeas petitions and claims under 42 U.S.C. § 1983 since the time he pleaded guilty in May 2003 to two counts of aggravated sexual assault of a child, as well as other crimes.

O'Neal was provided notice and the opportunity to object. *See* 28 U.S.C. § 636(b)(1). No objections were filed, so review is for plain error. *Guillory v. PPG Indus., Inc.*, 434 F.3d 303, 308 (5th Cir. 2005). No plain error appears. The Court **ACCEPTS** the M&R as the Court's Memorandum Opinion and Order. The Court **DISMISSES** **WITHOUT PREJUDICE** O'Neal's habeas petition because it is successive and an abuse of the writ. (Dkt. No. 1).

The Court **WARN**S O'Neal that sanctions, including a monetary penalty, a bar to filing any further habeas petitions, motions or lawsuits, or other impediments may be imposed against him if he files any further habeas petitions challenging his convictions with any federal court in the Fifth Circuit, as he is now well aware that he must first obtain authorization to file a successive petition from the United States Court of Appeals for the Fifth Circuit.

It is SO ORDERED.

Signed on April 4, 2022.



DREW B. TIPTON
UNITED STATES DISTRICT JUDGE